

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA, EASTERN DIVISION

ANDREA HOLIFIELD,)
Plaintiff,)
vs.) CASE NO. 3:06-cv-00482-VPM
PETER LUSCHE, M.D., et al.,)
Defendant.)

**MOTION TO QUASH CROSS-NOTICE OF DEPOSITION
OF KEN KWONG AND MOTION FOR PROTECTIVE ORDER**

COMES NOW the defendant, Peter Lusche, M.D., and moves this Court to quash the cross-notice of deposition of Ken Kwong and enter a protective order precluding the applicability of Ken Kwong's deposition noticed in the Multi-District Litigation matter of *In Re Zyprexa* products liability litigation (MDL-1596) pending in the United States District Court for the Eastern District of New York from applicability to this matter. In support of this motion, this defendant states as follows:

1. Counsel for Eli Lilly and Company has cross-noticed the video deposition of Ken Kwong for June 13, 2006, a deposition noticed for the Multi-District Litigation matter of *In Re Zyprexa* products liability litigation (MDL-1596) currently pending in the United States District Court for the Eastern District of New York.
2. This defendant is not a party to this Multi-District Litigation and has not been privy to the exchange of discovery in the Multi-District matter of *In Re Zyprexa* litigation.

3. No party in the above matter has provided any discovery responses in this case that have identified Ken Kwong in any respect.

4. While this defendant has no information on Mr. Kwong, presumably his testimony will be expert in nature. No party has identified Mr. Kwong as an expert witness or provided any information regarding his expected testimony as required by the Alabama Rules of Civil Procedure.

5. To the extent that Mr. Kwong is a fact witness, this defendant has no knowledge of his role in the underlying issues of this matter.

6. While this defendant does not seek an order that would preclude the deposition from going forward in the MDL cases, this defendant has not had an opportunity for adequate or meaningful preparation for the above-stated reasons.

7. Should Mr. Kwong's testimony be pertinent to the issues in this case, his deposition can be re-noticed at a time when the appropriate disclosures provided by the Rules of Civil Procedure and any future scheduling orders of this Court would allow.

8. The deposition of Mr. Kwong was cross-noticed in the blind without confirmation of availability of undersigned counsel. Notwithstanding the substantive objections outlined above, undersigned counsel is otherwise unavailable to attend at the date and time noticed.

9. Undersigned counsel has filed a Motion to Remand which is pending and due to be granted.

WHEREFORE, PREMISES CONSIDERED, this defendant respectfully moves this Court to quash the cross-notice of deposition of Ken Kwong and for entry of a protective order excluding his June 13, 2006 deposition from applicability to this case.

s/Michael K. Wright
Michael K. Wright (WRI005)
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CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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Respectfully submitted,

s/Michael K. Wright
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